IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.125 of 1995

1. Vellaichamy
2. Manivannan
3. Ponnusamy @ Oodan .. Appellants

-Vs-

State by Inspector of Police
Manaparai. .. Respondent

This Criminal Appeal is filed under S.374 of Code of Criminal Procedure against the Judgment of the II Additional Sessions Judge, Tiruchirapalli made in S.C.No.16/94 dated 12.1.1995.

!For Appellants : Mr.G.Muthukrishnan

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

The appellants herein, who were ranked as A-1 to A-3, were tried by the Court of Sessions, Tiruchirapalli, where the 1st appellant/A-1 was found guilty under S.302 of I.P.C., while the 2nd and 3rd appellants/A-2 & A-3 were found guilty under S.302 read with S.34 of I.P.C., and all the accused were sentenced to life imprisonment.

2. The first appellant stood charged under S.302 of I.P.C., while the appellants 2 and 3 were charged under S.302 read with S.34 of I.P. C. alleging that on 28.3.1992 at 11.00 A.M., in further of their common object to kill one Subramanian, A-2 and A-3 caught hold of him, while A-1 attacked him on his head with spade; and that the injured who was admitted in the Government Hospital, Trichy died on 29.3.1992 as a direct consequence of the the injuries caused to him by the accused.

3. The facts of the prosecution case can shortly be stated as follows:

P.W.1 Selvam, his father P.W.6 Ayyavoo @ Nondikaruppan, P.W.7 Muthukaalai @ Muthusamy and the deceased Subramanian were residents of

Kuppanoor. The accused also belonged to the same place. A-2 and A-3 are brothers. The agricultural lands of the accused were situate on the north of Kallupatti Elamanam east-west Road, while the lands of the deceased and the witnesses were situate on the south of the said Road. The east-west river vari was situate on the southern side of the said east-west Road and abutting the lands of the deceased and the witnesses on the north. One year before the occurrence, A-1 and A-2 dug a well in their lands and dumped the excavated earth on the southern side of the Road abutting the lands of the deceased and the witnesses, despite objections. Consequently, the lands of the deceased and the witnesses were damaged during the rainy season. In view of the same, the relationship between the accused and the deceased and the witnesses became strained. Two days prior to the occurrence, the third accused dug a well in his land and dumped the excavated earth near the land of the deceased. The deceased and the adjacent land owners questioned the same. But, the third accused did not care for the same. On 28.3.1992 at about 11.00 A.M., P.Ws.1, 6, and 7, the deceased and the others were doing agricultural operations in their respective fields. At that time, the third accused as he did previously, dumped the excavated earth near the land of P.Ws.1 and 6, to which they raised objections. The deceased and P.W.7, who stood nearby, questioned the act of A-3. Immediately, A-1 and A-2 joined A-3 and talked in support of him. The deceased asked all the accused why they should dump the excavated earth, despite their objection. Immediately, A-3 took a stick and attacked the deceased. The deceased sustained injury on his right thumb, when he warded of the attack. A-2 attacked the deceased with a stick on his right shoulder. A-1 ran towards his well and brought a spade. A-2 and A-3 caught hold of the deceased, while A-1 attacked the deceased on his head with the spade. The seriously injured deceased fell on the ground. The oth er witnesses hired a car bearing Registration No.MDA 4443, owned by P.W.10 Manokaran at Vaiyampatti and took the injured from the place of occurrence to Government Hospital, Manaparai. P.W.2 Dr.Venkatachalam attached to Government Hospital, Manaparai treated him and found the following injuries.

1. A lacerated wound with diffused wound 3 x ½ over left temporal.
2. Two lacerated wounds 3 x 2 over right index finger.
3. An abrasion 2 x 2 right thumb.

P.W.2 Doctor has issued Ex.P2 accident register in that regard. The Doctor referred the injured to Trichy Government Hospital. At about 2.00 P.M., the injured was admitted at Trichy Government Hospital. P.W.3 Dr.Manivel examined him and found the very same injuries, noticed by P.W.2 Doctor. The accident register given by P.W.3 is marked as Ex.P3.

4. On the strength of Ex.P1 statement given by P.W.1, the Sub Inspector of Police Mr.Devadoss, attached to Puthanantham Police Station, registered a case in Crime No.26/92 under Ss 323, 307 and 341 of I.P. C. against the accused. He sent Ex.P14 express First Information Report to the concerned court. On receipt of the copy of the F.I.R., P. W.12 Jayakumar, Inspector of Police, proceeded to the Head Quarters Hospital, Trichy. Since the injured was unable to speak, he recorded the statements of P.W.1 and other witnesses. He recovered M.O.1 dhoti worn by the deceased at the time of occurrence under Ex.P6 mahazar. On 29.3.1992 at 6.45 A.M., he inspected the site of incident, prepared Ex.P7 observation mahazar and Ex.P15 rough sketch, and recovered M.O.2 bloodstained earth and M.O.3 sample earth. He recorded the statement of the witnesses. The victim, who underwent treatment in the

Government Hospital, Trichy, died at 12.00 noon on 29.3.1992. Ex.P4 death intimation given by P.W.4 Dr.Mathivanan, was despatched to Outpost Police Station. On receipt of the said intimation, the Head Constable attached to Puthanantham Police Station converted the case into one under S.302 of I.P.C. and despatched Ex.P16 express report to the concerned court. On receipt of the information, the Investigation Officer proceeded to the Government Hospital, Trichy, conducted the inquest on the dead body of Subramanian between 3.00 P.M. and 5.30 P.M. and prepared Ex.P17 inquest report. He sent the dead body with a requisition for postmortem through a constable P.C.1590. On receipt of the said requisition, P.W.5 Dr.R.Kumar commenced the postmortem at 1 1.00 A.M. on 30.3.1992, conducted the autopsy and found the following external injuries on the dead body and corresponding internal injuries.

1. A swelling at the left side of head over left ear measuring 4" with a sutured (3) wound measuring ½" length present.
2. A lacerated wound 2 ½" on the right thumb.
3. A small lacerated in the right index finger.
4. Abrasion 2" on the back of right shoulder.
5. Bleeding through right ear present.
6. Back of IV line present in left forearm.

Stomach empty. On opening the wound (1) blood clot seen underneath scalp. Bones in the left side fractured, irregular extending to the base of skull, under the fractured base. Blood clot about 100 ml present brain matter found in several places & blood clots present all over brain.

P.W.5 Doctor issued Ex.P5 postmortem certificate and has opined that the deceased would appear to have died of shock and haemorrhage and damage to brain. The Investigation Officer examined P.W.5 and recorded his statement. A constable P.C. 1590 produced M.O.4 dhoti and M.O.5 waist string from the dead body, which were recovered by P.W.12.

5. P.W.13 R.Salomen, Inspector of Police, who took up the further investigation of the case, made Ex.P10 requisition to the concerned Judicial Magistrate's Court to send all the material objects for chemical analysis. The Chemical Analyst's report is marked as Ex.P12, while the Serologist's report is marked as Ex.P13. On completion of the investigation, he filed a charge sheet against the accused under S.302 read with S.34 of Indian Penal Code.

6. In order to prove the case, the prosecution has examined 13 witnesses and marked 17 exhibits and 5 material objects. When the accused were questioned under S.313 of Code of Criminal Procedure, they flatly denied the versions of the prosecution witnesses as false. No defence witness was examined. The learned Sessions Judge after hearing the rival submissions and scrutiny of the available materials found both the accused guilty and ultimately sentenced them to undergo life imprisonment. Aggrieved appellants/accused have brought forth this appeal.

7. The learned Counsel appearing for the appellants would submit that though the occurrence has taken place by 11.00 A.M., the first information was given only at 6.30 P.M., and thus, there was an inordinate delay; that the said delay was not explained; that in view of the same, no reliance could be placed on Ex.P14 F.I.R.; that though there were number of persons and close relations to the deceased, no one informed the occurrence to the Police, and the same would clearly indicate that the accused who were inimical to the deceased, were deliberately roped in, in order to wreck vengeance; that it is

pertinent to note that P.Ws.1, 6 and 7 are all interested witnesses; that all the eyewitnesses have spoken that A-2 attacked the deceased on his shoulders, but no corresponding injury is found, which would indicate that they could not seen the occurrence; that with regard to the place of occurrence, there are lot of discrepancies; that P.W.1 has categorically deposed that he has not stated the place of occurrence in his Ex. P1 complaint; that there is variance between the testimonies of the witnesses and the observation mahazar and rough sketch with regard to the scene of occurrence; that it is highly artificial that the first accused ran to his well, which was situate about 300 feet away, brought the spade and attacked the deceased; that a perusal of Ex.P12 chemical analyst's report would indicate that vegetable matter was seen on the bloodstained earth as well as sample earth sent to the laboratory, and thus, the occurrence should have taken place within thope or field; that according to P.W.2 Doctor, the deceased was said to have been brought by one Kandasamy, and hence, P.W.1 could not have taken the deceased to the hospital; that the evidence of P.Ws.1, 6, 7 and 10 cannot be relied on, in view of the testimony of P.W.2; that it is pertinent to note that the said Kandasamy has not been examined by the prosecution; that the evidence of P.W.2 that the deceased was said to have told him that he was beaten by five known persons, throws a doubt over the prosecution case; that it is significant to note that when the deceased was brought to the hospital at Manapparai at 1.00 P. M., no complaint was given either to the Police or to the Village Administrative Officer; that after the first aid, the deceased was straight away taken to the Hospital at Tiruchirapalli, and this will clearly show that Ex.P1 complaint and Ex.P14 FIR were concocted to rope in all the appellants in the case; that it is the evidence of P.Ws.1, 6 and 7 that a quarrel was said to have taken place between P.W.6 and A-3; that while so, it is highly unbelievable that the accused should have attacked the deceased; that according to Ex.P2 wound certificate, there is no wound on the right shoulder, which will eliminate A-3 from the offence; that it is pertinent to note that there was two days delay in sending the FIR to the Court; that the weapons alleged to have been used by the accused were not recovered; that there are no independent witnesses to corroborate the evidence of P.Ws.1, 6 and 7; that according to P.W.7, the deceased was said to have been taken to the hospital by his wife, but she has not been examined; that the evidence of P.W.8 is totally unbelievable; that P.W.1 has not stated in his statement to the police about the presence of P.W.8 in the hospital on 28.3.92, and as such, the very presence of P.W.8 on 28.3.92 in the hospital and his having signed Ex.P6 mahazar are totally unbelievable; that there are lot of contradictions between the evidence of P.W.1 and P.W.10; that even if the entire version of the prosecution is accepted as true, it makes an offence under S.304 Part II I.P.C., and the sentence awarded to the appellants are excessive; that the judgment of conviction and sentence passed by the lower court cannot be sustained, and hence, the same has got to be set aside, and the appellants be acquitted of the charges.

8. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has clearly proved that there existed a long standing enmity between the parties; that even before the date of occurrence, A-3 was carrying on his unlawful acts of dumping the excavated earth; that on the very date of occurrence, he continued to do the same, which was objected to by P.W.1 and his father P.W.6; that the deceased and P.W.7 have questioned the

atrocious conduct of A-3; that at that time A-1 and A-2 joined A-3 in the commission of the crime; that it was A-3, who first attacked the deceased with a stick, and following him, A-2 attacked the deceased with a stick on his shoulder, and in that course, the deceased sustained simple injuries; that A-1 immediately ran to his field situated nearby and brought a spade; that A-1 attacked the deceased on his head with the spade, when A-2 and A-3 facilitated the crime by catching hold of him; that the injured was taken to the hospital; that originally a case was registered under S.307 of IPC against the accused, and on his death, it was converted to one under S.302 of IPC; that P.W.5, the Doctor, who conducted the autopsy has clearly opined that the deceased would appear to have died of shock and haemorrhage and damage to brain, and thus, the medical evidence was in support of the ocular evidence; that there was no delay in the information to the Police, since immediately after the occurrence, one of the witnesses went to Vaiyampatti situated 15 kilometers away from the scene of occurrence, hired a taxi of P.W.10, brought it to the place of occurrence, took the injured directly to the Government Hospital Manapparai, and therefrom to Trichy, where the police people on information went over and got the information of P.W.1; that it was quite reasonable on the part of the prosecution witnesses to proceed directly to the hospital to save the seriously injured victim, and thus, there was no delay in the information; that it is not correct on the part of the appellants' side to state that no injury was found on the shoulder of the deceased, and hence, there was nothing to indicate that A-2 attacked him with a stick, and thus all the eyewitnesses have given false evidence, and therefore, it has got to be rejected; that that the evidence of the postmortem Doctor and the description of external injuries in the postmortem certificate would be sufficient to reject the said contentions; that both in the rough sketch and observation mahazar, the place of occurrence has been clearly pointed out, which leaves no doubt about the place of occurrence; that all the eyewitnesses have narrated the occurrence consistently and have given cogent evidence; that there are no merits in the appeal, and hence, the appeal has got to be dismissed.

9. Admittedly, P.Ws.1, 6 and 7, the deceased and the appellants/A-1 to A-3 belonged to the same village. It is also not in dispute that the accused had their lands situate on the north of Kallupatti Elamanam east-west Road, while the fields of the deceased and P.Ws.1 and 6 were situate on the southern side of that Road. The contents of Ex. P7 observation mahazar and Ex.P15 rough sketch prepared at the time of inspection by the Investigation Officer are not disputed. The river vari is situate on the southern part of the said Road, abutting the lands of the said prosecution witnesses and the deceased. According to the witnesses, even two years before the occurrence, A-1 and A-2 who had their lands on the northern side of the Road dug a well in their field and dumped the excavated earth on the side of the river vari, and consequently, the fields of the witnesses were damaged during rainy season. Even a few days prior to the occurrence also, despite objections, A-3 dumped the excavated earth nearby the lands of P.W.1., and on the date of occurrence, A-3 continued the said unlawful acts. When A-3 was questioned by P.Ws.1 and 6, the deceased and P.W.7 joined with them. A-2 and A-2 who were nearby, came to the support of A-3. Thus, from the evidence of P.Ws.1, 6 and 7, it would be crystal clear that there existed previous enmity between the parties, and the accused had sufficient motive to indulge in criminal acts of attacking the deceased.

10. The central evidence of the prosecution consisted of the testimonies of P.Ws.1, 6 and 7, who were the eyewitnesses to the occurrence. All those witnesses have clearly spoken to the fact that at the time of occurrence, it was A-3, who first attacked the deceased with a stick, and when it was warded of, the deceased sustained injury on the right thumb; that A-2 attacked the deceased on his shoulder; and that A-1 ran to his well, situate nearby, brought an iron spade and attacked the deceased on his head, while A-2 and A-3 facilitated the crime by catching hold of his hands. All the eyewitnesses have made a clear narration of the overt acts by the respective accused. Merely because the deceased was related to the eyewitnesses or previously there was some enmity between the accused and the deceased or the witnesses, their testimony cannot be discarded which is otherwise convincing and consistent. A careful scrutiny of their evidence would indicate that the said eyewitnesses have neither made any attempt to rope in the accused nor exaggerated their role in the occurrence. But, their evidence is found to be natural, acceptable, convincing, consistent and hence acceptable. It is pertinent to point out that while all the eyewitnesses have narrated the sequence of events, speaking about the overt acts of the individual accused, not even one question was put disputing or suggesting anything against their versions. In the absence of the same, it can be well stated that the evidence of the eyewitnesses is in tact and virtually remains unshaken, and thus, there is no difficulty in believing the testimonies of the eyewitnesses.

11. From the available materials it could be seen that the victim was immediately taken to the Government Hospital, Manapparai, where he was admitted by P.W.2 Dr.Venkatachalam. According to P.W.2 Doctor, the victim has given a statement, and the same was recorded by him. Ex.P2 accident register would reveal that the victim has stated that he was assaulted by five known persons with spade. On the advise of P.W.2 Doctor, the victim was taken to Trichy Government Hospital, where despite treatment, he died at 12.00 Noon in the next day. On his death intimation, the case was converted to one under S.302 of I.P.C. The Investigation Officer after conducting the inquest, sent the dead body of Subramanian along with a requisition for postmortem. On receipt of the requisition, P.W.5 Dr.Kumar conducted the autopsy and has given Ex.P5 postmortem certificate. P.W.5 Doctor in his evidence has opined that the deceased would have died of shock and haemorrhage and damage to brain; that the death would have been caused by attacking a person with a spade; and that the injury No.1 and the corresponding internal injuries would be sufficient to cause death. The description of the injuries found in Ex.P5 postmortem certificate exactly tallied with the overt acts attributed to the respective accused by the eyewitnesses. Thus, the ocular evidence through P.Ws.1, 6 and 7 stood fully corroborated by the medical evidence. From the ocular evidence, which is fully supported by the medical evidence, it would be abundantly clear that the attack made by A-2 with spade on the head of the victim has directly led to his death, and the said crime was facilitated by A-2 and A-3 by catching hold of him.

12. After careful consideration of the available materials, the court is unable to agree with all or any one of the contentions put forth by the appellants' side. Immediately after the occurrence that took place at 11.00 A.M., one of the witnesses hired a car from Vaiyampatti situated 15 kilometers from the site of incident, and the victim was taken to Manapparai Government Hospital immediately and therefrom to Trichy. Thus, the witnesses who were

his close relations, have evinced more interest in saving his life. It was quite consistent that the human conduct under the circumstances, would be to save the life of a person rather than to lodge a complaint immediately, and hence, the court is unable to see any delay in lodging the complaint.

13. A perusal of the scene of occurrence in the rough sketch and observation mahazar would clearly reveal that it was on the southern side of the east-west Road. At the time of inspection, the Investigation Officer in the presence of the witnesses, has recovered M.O.2 bloodstained earth and M.O.3 earth without bloodstain. The scientific test made on the bloodstained earth and the dhoti of the deceased recovered from his body at the time of autopsy would reveal that they contain the same blood group. The evidence of the witnesses does not leave any doubt and found to be consistent with the observation mahazar and rough sketch.

14. It is true that all the three witnesses have uniformly deposed that A-2 attacked the deceased on his right shoulder. The postmortem Doctor has found an abrasion on the right shoulder. Hence, the said contention of the appellants' side cannot be accepted. According to the learned Counsel for the appellants, P.W.1 could not have seen the occurrence, since he did not take the victim to the hospital, and according to P.W.2 Doctor of Manapparai Government Hospital, the deceased was said to have been brought by one Kandasamy, which has been recorded in the wound certificate marked as Ex.P2, and the prosecution has not examined the said Kandasamy, and from the statement recorded by the Doctor in Ex.P2 wound certificate, it would be clear that P.W.1 could not have been present in the place of occurrence. From the evidence, it could be seen that Kandasamy was the elder brother of the deceased. According to P.W.1, it was he who along with others took the victim to Manapparai Government Hospital. P.W.7 has categorically deposed that P.W.1, Kandasamy, brother of the victim and the wife of the victim all took the victim to Manapparai Hospital. It is true that P.W.2 Doctor has recorded that it was Kandasamy who admitted the victim in the hospital, but it did not mean that no one else accompanied him. From the evidence, it is abundantly clear that P.W.1 also accompanied the victim along with others. Therefore, it cannot be stated that P.W.1 was not present at the place of occurrence, in view of the statement recorded by P.W.2 Doctor.

15. From the evidence adduced by the prosecution, there is nothing to indicate that the attack made by the accused was either preplanned or premeditated. At the time of occurrence, when A-3 dumped the excavated earth near the field of P.W.1, it was objected to by P.Ws.1 and 6. It is pertinent to note that the accused did not attack either P.W.1 or P.W.6, but have attacked the deceased, who intervened and questioned the act of A-3. It was A-2 who first started attacking the victim with a stick, and the same was followed by A-3 attacking him with a stick. A-1 immediately ran to his well, brought a spade and gave a single blow on the head of the victim, while the same was facilitated by A-2 and A-3 by catching hold of him. It is quite evident from the testimonies of the eyewitnesses that there was some wordy altercation between the prosecution witnesses and the deceased on the one side and the accused on the other side regarding the dumping of the excavated earth nearby the river vari, and following the same, the occurrence has taken place. Taking into consideration the facts and circumstances that immediately preceded the occurrence; and that it was a single blow given by A-1, that too when it was not premeditated, but a sudden one, the Court is of the view that

the act of A-1 would be construed as culpable homicide not amounting to murder, and in that, A-2 and A-3 have shared the common object. Therefore, the appellants/A-1 to A-3 are punishable under S.304 Part I of Indian Penal Code.

16. In the result, this criminal appeal is allowed to the extent of modifying the judgment of the lower court as follows. The first appellant/A-1 is found guilty under S.304 Part I of I.P.C. The appellants 2 and 3/A-2 and A-3 are found guilty under S.304 Part I read with S.34 of I.P.C. The appellants/accused are sentenced to undergo R.I. for seven years. The learned Sessions Judge shall take steps to commit the accused to prison, if they are on bail, to undergo the remaining period of sentence.

Index: Yes
Internet: Yes
To:
1. The II Additional Sessions Judge, Tiruchirapalli.
2. The II Additional Sessions Judge, Tiruchirapalli,
Through The Principal Sessions Judge, Tiruchirapalli.
3. The Superintendent, Central Prison, Tiruchirapalli.
4. The Judicial Magistrate, Manaparai.
5. The Judicial Magistrate, Manaparai,
Through The Chief Judicial Magistrate, Tiruchirapalli.
6. The District Collector, Tiruchirapalli.
7. The Director General of Police, Chennai 4.
8. The Inspector of Police, Manaparai.
9. The Public Prosecutor, Madras.

nsv/

P.SHANMUGAM, J.
AND
M.CHOCKALINGAM, J.

Judgment
in
C.A.No.125 of 1995

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